

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN RIGHTS

Saundra Spigner,

Complainant,

v.

Hennepin County,

Respondent.

DISCOVERY ORDER
AND ORDER FOR
CONTINUANCE

The above-entitled matter is before Administrative Law Judge Phyllis A. Reha on cross-motions to compel compliance with the parties' requests for discovery. By a written Motion filed December 5, 1995, Complainant sought an Order compelling Hennepin County (the County) to fully respond to interrogatory questions and produce documents, particularly concerning the identity and personnel files of County employees. On December 11, 1995, the County moved for an Order compelling Complainant to answer interrogatory questions. Subsequently, Respondent moved for a continuance of the hearing scheduled in this matter. The record on all these motions closed on January 10th with the receipt of the Respondent's reply memorandum on the motion for continuance.

Sonja Dunnwald Peterson, Horton and Associates, 700 Title Insurance Building, 400 Second Avenue South, Minneapolis, Minnesota 55401-2402, filed the Motion on behalf of Complainant. Janeen E. Rosas, Assistant County Attorney, Suite 2000 Government Center, Minneapolis, Minnesota 55487, represents the County.

Based upon the memoranda filed by the parties, all of the filings in this case, and for the reasons set out in the memorandum which follows, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that:

1. Within fifteen days, the County shall give the notice set forth in Exhibit A to all employees covered by Complainant's Request for Documents Number 2 and within ten days thereafter shall submit those employee's personnel files to the Administrative Law Judge for an *in camera* review. At the same time the personnel files are submitted to

the Judge, the County shall file an affidavit of compliance with the requirements set forth in Exhibit A.

2. Within fifteen days, the County shall give full and complete answers to the questions in Complainant's Interrogatory Number 5, including the home address and telephone number of the employees covered by the interrogatory question. Where the County is not in possession of the current address of any person, the County shall provide the last known address and telephone number of the person and clearly identify the information as such.

3. The County is not required to answer Complainant's Interrogatory Numbers 17 through 21 as part of the first set of interrogatories. Complainant may choose to serve those questions as a second set of interrogatories and the County shall, in such event, answer the interrogatories as otherwise required under the rules of discovery.

4. Within fifteen days, Complainant shall provide more complete answers to the County's Interrogatory Numbers 1, 2, 4, 5, and 7.

5. The County's requests relating to the County's Interrogatory Numbers 13, and 14 and the County's Request for Production of Documents Number 1-4, 7, and 9, are DENIED.

6. The hearing scheduled in this matter for January 25, 1996, is hereby continued indefinitely. A telephone conference to schedule the new hearing date will be held as the parties near completion of the period established for discovery.

Dated: January ____, 1996.

PHYLLIS A. REHA
Administrative Law Judge

MEMORANDUM

Both parties have filed motions to compel discovery. Both parties have shown that the other's responses to those requests have been inadequate in some areas. The Judge is concerned, however, that counsel for the parties have not been making good faith efforts to cooperate with each other thereby causing delay and bad feelings. Such conduct impedes the efficiency of the administrative process and may not be in the best interests of their clients. The issues presented by these motions are the sort that would normally be resolved between counsel acting in good faith and with warm zeal toward their clients' best interests. The behaviors related to the Judge by both parties has caused the Judge to consider imposing a further order governing counsels' conduct in this matter. At this stage, the Judge has considered the imposition of such an order to be too harsh. Should matters not improve, the issue of sanctions will be reconsidered.

The representation for the County has changed twice on this matter and the original discovery deadline was moved back by mutual agreement to accommodate the

County's needs. A protective order was entered into by agreement that restricts the use of nonpublic or confidential data, including submission of highly sensitive data to the Administrative Law Judge for *in camera* review. A telephone prehearing conference was held in this matter on December 15, 1995, and the previously adopted schedule for completing various prehearing actions was discarded. A request to continue the hearing in this matter to allow the parties to complete discovery has been filed with the Judge. .

The County has responded to Complainant's Interrogatory Number 5 with an objection to the request as overly broad, unduly burdensome, and violative of the Minnesota Data Practices Act (MDPA). The request was for the home addresses, telephone numbers, race, gender, and dates of employment of some County employees. All of the employees identified in the request are persons likely to have knowledge of the working conditions experienced by Complainant. Some of the data requested is classified as public data by the MDPA, such as dates of employment. The remainder of the data is relevant to the issues of racial and gender discrimination and likely to lead to the discovery of relevant, admissible evidence. The protective order issued in this matter exists to protect the privacy interests of those persons who are the subject of the data sought in this request. None of the requests in this item are overly broad or unduly burdensome. The County must fully answer the questions asked in Interrogatory Number 5.

Respondent refused to answer the Complainant's Interrogatory numbers 17 through 23 on the basis that the total number of questions exceeded the limit of fifty questions set by Minn. R. Civ. P. 33.01(a). Respondent arrived at that conclusion by counting each subdivision or identification of specific information as a separate question. Complainant asserts that, under the interpretations given to interrogatory questions generally, the questions should not have been treated as separate questions. The Judge is not convinced that the counting of the specific items in each question was an appropriate interpretation of the rules governing interrogatories. However, the Judge also believes that the Respondent should have sufficient time to answer those interrogatories. Therefore, the Complainant will be permitted to submit the interrogatory questions as a second set of interrogatories and Respondent will have the full measure of time allowed to answer those questions. In the interest of efficiency, the Complainant may submit a letter to Respondent identifying the questions numbered 17 through 23 as the second set, rather than drafting a new pleading.

Complainant's Request for Documents Number 2 requests the submission of personnel files. Respondent has legitimately complained of the intrusion into the privacy interests of the persons who are the subjects of that data. The procedure set out in State by Johnson v. Colonna, 371 N.W.2d 629, 634 (Minn.App. 1985) is the appropriate method of addressing all the competing needs of the parties and nonparties to this matter. The Judge will inspect each file *in camera* and pass on whatever relevant information is present, subject to whatever redaction or limitation that is appropriate.

Respondent has moved for Complainant to provide more complete answers to Respondent's Interrogatory Numbers 2, 4, 5, 7, 13, and 14 and Respondent's Request for Documents Numbers 1-4, 7, and 9. Number 2 asks for specifics regarding the list of persons as to what the person knows about the Complainant's allegations. Complainant responded to that request by referring to the answer given for Number 1. Complainant supplemented that answer by stating that the source of each person's knowledge of the Complainant's assertions was because of the person's job position. This answer is not sufficient to give the Respondent an idea of the time period of when specific incidents alleged took place and which employees witnessed what conduct. Respondent must answer the questions in the interrogatory more fully, giving the specific information of observations, incidents, or other bases for the witnesses knowledge.

Respondent's Interrogatory Number 4 requests the specifics of each incident of sexual discrimination alleged by Complainant. Initially, Complainant referred to paragraphs 1-8 in the Complaint. Complainant supplemented this answer with three pages describing a number of instances of differential treatment or abusive behavior. The description was prefaced by a statement that "These incidents included but are not limited to ..." Respondent objects to the possibility of other incidents not being disclosed. Complainant must disclose all incident to the best of her ability. If any incidents are overlooked in discovery, rather than merely not included, the Judge will take any appropriate measures to ensure the Respondent is not prejudiced, If any incident is not disclosed, rather than not remembered, the Judge will foreclose evidence on that issue for directly establishing the Complainant's charges of discrimination.

Respondent's Interrogatory Number 5 asks for an identification of what sexually discriminatory incidents were witnessed by which individuals in Number 1. Number 7 asks for the same information relating to racially discriminatory incidents. Complainant's responses merely refer to the answer to Number 1. That is not sufficient to respond to the interrogatory. Many of the answers can be found in the supplemental answer to Number 4, but the Respondent is entitled to the Complainant's best effort at recalling who was present at which incidents. Complainant can combine the two answers, however, since the facts alleged are a mixture of racial and gender discrimination. Respondent will not be prejudiced by combining the answers.

The method and evidence used by Complainant to calculate damages claimed in this matter is requested in Numbers 13 and 14. Complainant responded that no evidence other than the MHRA and counsel's own experience were used to determine the damage amounts. Respondent maintains these answers are insufficient. Complainant has withdrawn her claim of emotional harm. The issue of damages is often determined by the Administrative Law Judge, without the benefit of documentation. Respondent cannot obtain through discovery that which does not exist. Should any such documentation exist and is being improperly withheld, sanctions are available.

In response to Respondent's Request for Production of Documents, Complainant replied that all relevant, nonprivileged documents would be made available at a mutually

agreed-upon time. Respondent objected to the implication that documents existed that were not being disclosed due to privilege and the standards for claiming privilege, as set out in the instructions for completing discovery, have not been met. In responding to the County's Motion to Compel, Complainant explained that the only documents not being disclosed were notes and correspondence between Complainant and her counsel. The attorney-client privilege being asserted is not subject to discovery. Any other documents must be disclosed, absent the existence of a privilege and compliance with the standards for claiming privilege in Respondent's Request for Production of Documents.

Each party has pointed out valid areas for compelling discovery from the other. Some of the claims are without merit. Therefore, to the extent proper, each party's Motion to Compel Discovery is GRANTED. Since discovery is not completed and is not likely to be completed prior to the scheduled hearing date, the hearing is therefore CONTINUED. The Judge has considered the Complainant's situation and does not believe that she will be prejudiced by the delay in the hearing date.

P.A.R.